

**REMARKS/ARGUMENTS.**

Claim 1 has been amended to recite contrast agents wherein the dye characteristics do not change on binding to the target. Basis can be found in the present specification at page 14, lines 8-10. Therefore the amendment to claim 1 does not add new matter. Claim 4 has been cancelled. Hence, claims 1, 6-8, and 11 are pending in the current Office Action. Applicant respectfully requests that the amendment be entered.

The following remarks, in conjunction with the above amendment, are believed to be fully responsive to the Office Action.

**1. Claim Rejections: 35 USC §103(a).**

**1.1. Weissleder and Cannizzaro.**

Claims 1, 4, 6-8 and 11 stand rejected as being obvious over the combination of Weissleder (US 2003/0044353) in view of Cannizzaro (US 2005/02611253 A1). Claim 4 has now been canceled, hence the objection reads on claims 1, 6-8 and 11.

The Examiner suggests that, based on the combination of Weissleder and Cannizzaro, it would have been obvious for the person skilled in the art to provide a known tyrosine kinase inhibitor to EGFR conjugated with a chromophore in the compositions of Weissleder, for optical imaging of lung cancer.

Applicants refer to revised claim 1, where it is an essential feature that the characteristics of the optical reporter of the contrast agent do not change when binding to the abnormally expressed target. That is totally different to the teaching of Weissleder, where the probe is required to be an “activatable imaging probe” which is “activated” *in vivo* by various processes such that “...the optical properties of the chromophores are altered...”. See Weissleder claims 1, 4, 10, 11, 14, 17, 22, 25, 34, 40, 42, 43 and 47 and throughout.

The combination suggested by the Examiner therefore teaches towards activatable imaging probes with the characteristics cited above. Such subject matter is outside the scope of revised claim 1. The inventive step objection to claim 1 based on Weissleder and in view of Cannizzaro should therefore be withdrawn.

It is well settled that a reference must be considered not just for what it expressly teaches, but also for what it fairly suggests to one who is unaware of the claimed invention. *In re Baird*, 16 F.3d 380, (Fed. Cir. 1994).

Claims 6 to 8 and 11 all depend on claim 1, and hence by definition are believed non-obvious for the same reasons. The obviousness rejection to claims 1, 6-8 and 11 based on the combination of Weissleder and Cannizzaro should therefore be withdrawn.

**CONCLUSION**

Applicant respectfully holds that the claims submitted herewith fulfill the requirements of a patentable invention and that all rejections and objections be withdrawn and claims 1, 6-8, and 11 be allowed.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

Respectfully submitted,

/Craig Bohlken/  
Craig Bohlken  
Reg. No. 52,628

GE Healthcare, Inc.  
101 Carnegie Center  
Princeton, NJ 08540  
Phone (609) 514-6530  
I:\IP\Response to Office Action\PN\PN0398 (03-09-2010).doc